

SUPREME JUDICIAL COURT

Boston, Massachusetts 02108

NOTICE OF APPROVAL

Notice is hereby given that the Supreme Judicial Court has approved and promulgated rules as further indicated below.



Chief Justice

-
1. Court Submitting Rules for Approval:

The Trial Court (CJAM)

2. Date Rules Submitted for Approval:

Resubmitted on July 13, 2001

3. Date Approved and Promulgated by the Supreme Judicial Court:

October 1, 2001

4. Rules or Rules, or Amendments Thereto, Approved and Promulgated:

Effective January 1, 2002, Trial Court Rule III,

the Uniform Small Claims Rules are repealed and replaced by

the Uniform Small Claims Rules attached hereto.

(The original of this notice is to be filed in the office of the Clerk of the Supreme Judicial Court for the Commonwealth, and a copy to be sent by the Clerk to the court which requested approval of the rules.)

COMMONWEALTH OF MASSACHUSETTS

TRIAL COURT OF THE COMMONWEALTH

TRIAL COURT RULE III

UNIFORM SMALL CLAIMS RULES

**Effective January 1, 2002 for use in the District Court, Boston Municipal Court
and Housing Court Departments of the Trial Court**

November, 2001

Rule 1

SCOPE AND APPLICABILITY OF RULES

Pursuant to G.L. c. 218, §§ 21-25, these rules govern procedures in all small claims actions in the Trial Court of the Commonwealth. They shall be construed and applied to secure the just, speedy and inexpensive determination of every small claims action. Other civil rules of court shall not be applicable in small claims actions. The court may, in an individual case prescribe notice requirements at variance with those prescribed in these rules where fairness requires.

As used herein, the masculine shall include the feminine, and the singular shall include the plural. “Clerk” shall mean the Clerk-Magistrate of the division or a person assigned by him to perform the required function. “Court” shall mean the magistrate or judge presiding over the hearing of a small claims action. “Magistrate” shall mean a clerk-magistrate or assistant clerk magistrate authorized by G.L. c. 218, §§ 21-23 to hear and determine small claims actions. In Rules 7 through 10, the word “plaintiff” shall include a defendant with respect to any counterclaim or any claim against a third party brought by him, and the word “defendant” shall include a plaintiff or a third party with respect to any counterclaim or any third-party claim brought against him.

The Chief Justice for Administration and Management shall promulgate forms to be used in small claims actions.

Commentary to 2001 Amendments

Most of these amendments are proposed to conform the Uniform Small Claims Rules to the statutory changes enacted by St. 1992, c. 379. The reasons for other proposed changes are noted under each rule.

The former second paragraph of Rule 1 has been rendered unnecessary by the passage of time since the 1983 promulgation of the Uniform Small Claims Rules.

The newly-added definition of “magistrate” reflects the statutory change contained in St. 1992, c. 379 and intends that small claims matters generally be heard in the first instance by a clerk-magistrate or an assistant clerk-magistrate. No magistrate who is not qualified by education or training should preside over small claims since these matters are to be determined “according to the rules of substantive law.” G.L. c. 218, §21. The Trial Court will provide training pursuant to criteria approved by the Chief Justice for Administration and Management.

The newly-added definitions of “plaintiff” and “defendant” reflect the holdings of *Most v. Fitzgerald*, 417 Mass. 1001 (1994), and *Bischof v. Kern*, 33 Mass. App. Ct. 45 (1992), that small claims plaintiffs may appeal from an adverse decision on a counterclaim brought by the defendant. The addition of these definitions permits simple, consistent use of the terms “plaintiff” and “defendant” throughout these rules.

Rule 2

FILING A STATEMENT OF CLAIM

Each small claims action shall be begun on a Statement of Claim and Notice form. The claim shall be stated in concise, untechnical language, but with particularity and comprehensiveness. A statement shall not be insufficient merely because the plaintiff has failed to allege all the elements of a prima facie case. If requested by the plaintiff or if otherwise feasible and appropriate to facilitate the filing of a legible and complete claim that conforms to the requirements of this rule, the clerk shall provide assistance to the plaintiff in completing the form. The clerk shall provide necessary and helpful procedural information to small claims litigants if requested.

A claim may be filed in person or by mail. In either case, except where waived by the clerk of the court under the Indigent Court Costs Law (G.L. c. 261, §§ 27A-27G), the claim shall be accompanied by the entry fee required by G.L. c. 218, § 22 and the surcharge required by G.L. c. 262, § 4C. The clerk shall provide a copy of the Statement of Claim and Notice form to the plaintiff upon filing, which copy shall show the date and time of trial. The date the Statement of Claim and Notice form is filed shall constitute the date of commencement of the claim.

Commentary to 2001 Amendments

The change in the first paragraph is intended to encourage court personnel to provide procedural information and to assist claimants in the preparation of forms.

Rule 3

NOTICE TO DEFENDANT; ANSWER TO CLAIM

(a) **Notice.** The clerk shall promptly send to the defendant by certified mail, return receipt requested, and also by separate first class mail, at the address or addresses supplied by the plaintiff, a copy of the Statement of Claim and Notice form. Such certified mail notice of the claim shall be sufficient, although unclaimed or refused by the defendant, provided that the first class mail notice is not returned to the court undelivered. Service on out-of-state defendants shall be made pursuant to the provisions of G.L. c. 223A. The court may provide for any other means of service in individual cases as is deemed necessary.

(b) **Answer.** The defendant shall be instructed that he may, if he wishes, submit a written answer to the claim in the form of a letter to the court, with a copy mailed to the

plaintiff, signed by the defendant and setting out in clear and simple language the reason(s) why the plaintiff should not prevail. The answer should state fully and specifically what parts of the claim are contested. However, the filing of an answer is optional, and the failure to file an answer will not result in the defendant's default. If the defendant's failure to submit a written answer, or to send a copy of it to the plaintiff in a timely manner, has prejudiced the presentation of the plaintiff's case, the court shall grant a continuance at the plaintiff's request.

(c) **Defendant's Counterclaim.** In the answer, or in a separate writing filed with the court, the defendant may set forth any claim which he has against the plaintiff within the jurisdiction of the court in small claims cases, without incurring any filing fee or surcharge. Both the plaintiff's claim and the defendant's claim shall be deemed one case if the defendant mails notice of his claim to the plaintiff at least ten days in advance of the scheduled trial date. The court may also permit the defendant to bring such a claim in writing at any time. Such claims shall not be compulsory. No written answer to the defendant's claim is required. If the defendant's presentation of a counterclaim, or failure to send timely notice to the plaintiff, has prejudiced the presentation of the plaintiff's case, the court shall grant a continuance at the plaintiff's request.

(d) **Third-Party Practice.** The defendant may bring a claim against any third party who may be liable to him for all or part of the plaintiff's claim if the defendant's claim is within the jurisdiction of the court in small claims cases and notice is mailed to the third party in the manner provided in Rule 2 at least ten days in advance of the scheduled trial date. The court may also permit the defendant to bring such a claim in writing at any time. There shall be no filing fee or surcharge for such a claim. When a counterclaim is asserted against the plaintiff, he may bring a claim against a third party in the same manner.

Commentary to 2001 Amendments

The change to paragraph (a) codifies the holding of *Schreiber v. Hoyusgaard*, 1989 Mass. App. Div. 138 (S. Dist.), that in the case of an out-of-state defendant the service provisions of the long-arm statute (G.L. c. 223A, § 6) prevail over those in this rule. The practical significance of this change is that mail service on an out-of-state defendant is valid only if there is a signed receipt for the certified mail.

The procedure embodied in the proposed amendment to paragraph (b) would give plaintiffs a guarantee of protection from surprise defenses, but it would not require an answer to be filed in all cases. The amendment to paragraph (c) would also protect plaintiffs from surprise.

Rule 4

TRANSFER

(a) **To Regular Civil Docket.** The court may, upon request of a party or upon its own motion, transfer a claim or counterclaim begun under the small claims procedure to the regular civil docket pursuant to G.L. c. 218, § 24. If the court orders such a transfer: (i) the claim shall be entered on the court's regular docket for hearing and determination as though it had been begun under the Massachusetts Rules of Civil Procedure, but no entry fee shall be charged upon such transfer; (ii) the defendant shall serve and file an answer to the plaintiff's claim within twenty days of the date of such transfer, if the defendant has not already done so in the small claims action; (iii) in the order of transfer or thereafter the court may direct any party to file specific additional or substitute pleadings pursuant to the Massachusetts Rules of Civil Procedure; and, (iv) the court may impose any terms upon the transfer as the interests of justice may require.

(b) **To Housing Court under c. 185C.** Any small claims action within the jurisdiction of the Housing Court Department may be transferred to the Housing Court Department pursuant to G.L. c. 185C, § 20 by filing a notice of removal with the clerk of the division where such action is pending, and serving a copy thereof on the other parties. The clerk shall thereupon transfer such action to the Housing Court Department, where it shall be entered on the regular small claims docket. Thereafter, the court may, upon request of a party or upon its own motion, transfer a claim or counterclaim to the regular civil docket pursuant to G.L. c. 218, § 24, but no entry fee shall be charged upon such transfer.

(c) **To Medical Malpractice Tribunal.** Any small claims action for malpractice, error or mistake against a provider of health care shall be referred for the convening of a medical malpractice tribunal pursuant to G.L. c. 231, § 60B.

Commentary to 2001 Amendments

The change to paragraph (a) clarifies that when a small claim is transferred to the regular civil docket the defendant must file an answer within twenty days, if no answer was previously filed in the small claim. This eliminates the present uncertainty as to the next procedural step where no answer has been filed in such transferred cases. The court is also authorized to require additional or substitute pleadings where appropriate to clarify the issues in the transferred case — for example, requiring the plaintiff to file a formal complaint or an answer to a defendant's counterclaim. The former generalized reference to the "civil rules of court applicable to the department in which the case is pending" is no longer necessary because of the July 1, 1996 merger of the District/Municipal Courts Rules of Civil Procedure into the Massachusetts Rules of Civil Procedure.

The change to paragraph (b) clarifies that removal of a small claims action to the Housing Court Department under G.L. c. 185C, § 20 is a matter of right, requiring only a notice of removal, and not a motion

that involves any exercise of discretion by the court from which the small claim is being removed.

Paragraph (c) has been added as a reminder to litigants and court personnel that occasionally medical malpractice claims (usually in the form of billing disputes) are brought as small claims, and they remain subject to the statutory procedures in G.L. c. 231, § 60B. Administrative arrangements for such medical malpractice tribunals are currently made through the Superior Court's administrative office.

Rule 5

AMENDMENTS AND DISCOVERY

The court may at any time allow any claim or answer to be amended as justice may require. No discovery shall be allowed except upon good cause shown. Service of witness summonses shall be in accordance with the Massachusetts Rules of Civil Procedure.

Commentary to 2001 Amendment

The former generalized reference to the "civil rules of court applicable to the department in which the case is pending" is no longer necessary because of the July 1, 1996 merger of the District/Municipal Courts Rules of Civil Procedure into the Massachusetts Rules of Civil Procedure.

Rule 6

ATTACHMENTS

Pre-trial attachment shall not be permitted. Post-trial attachment shall be in accordance with applicable statutory provisions and with the Massachusetts Rules of Civil Procedure.

Commentary to 2001 Amendment

The former generalized reference to the "civil rules of court applicable to the department in which the case is pending" is no longer necessary because of the July 1, 1996 merger of the District/Municipal Courts Rules of Civil Procedure into the Massachusetts Rules of Civil Procedure.

Rule 7

TRIALS AND JUDGMENTS

(a) **Agreement for Judgment.** The parties may at any time file with the court, in person or by mail, an agreement for judgment, or an agreed-upon payment order, or both. Unless justice would not be served thereby, the court shall enter such agreement as the

judgment or order of the court and notify the parties in writing that it has done so. If such an agreement for judgment is filed prior to the scheduled trial date, neither party need appear on the scheduled trial date.

(b) **Continuances.** Where the defendant has been given notice as provided in these rules, trial shall not be continued to another date unless by agreement of the parties with the approval of the court, or unless there is a showing of good cause. Any motion for continuance shall be in writing unless the court permits an oral application.

(c) **Failure of a Party to Appear for Trial.** If the plaintiff fails to appear for trial and the defendant does appear, the claim shall be dismissed. If the defendant fails to appear for trial and the plaintiff does appear, the court may render judgment for the plaintiff and make an order for payment to the plaintiff. If neither the plaintiff nor the defendant appears for trial, the claim shall be dismissed.

(d) **Trial.** A small claims action shall generally be tried, and pretrial and post-judgment motions relating to such trials shall generally be determined, by a magistrate. Judges may hear such matters when deemed necessary by the court, provided that the defendant has first acknowledged in writing that, by electing to proceed with an initial trial by a judge, the defendant will waive the right to appeal for a subsequent trial by a judge or before a jury. Magistrate hearings shall be conducted in a courtroom, if one is available, and if not, in an area of the courthouse which is open and available to the public. Whenever possible, a court officer shall be in attendance. A magistrate shall sit at the clerk-magistrate's bench and not at the judge's bench, and shall not wear a robe. At the beginning of the small claims session, a magistrate shall identify himself as such to those present. A magistrate who has acted as a mediator pursuant to Uniform Magistrate Rule 4 shall not thereafter rule on any motion, nor preside over any trial or enforcement proceeding, in the same small claim.

(e) **Conduct of Trials.** All small claims proceedings shall be recorded in accordance with applicable rules of court. The parties and witnesses testifying shall be sworn. The court shall conduct the trial in such order and form and with such methods of proof as it deems best suited to discover the facts and do justice in the case. The participation by attorneys representing parties may be limited in a manner consistent with the simple and informal adjudication of the controversy. Non-attorneys shall be allowed to assist parties in the presentation or defense of their cases when, in the judgment of the court, such assistance would facilitate the presentation or defense. When an oral motion has been made, the clerk shall note in the docket any action taken on the motion.

(f) **Judgments.** Judgment shall be entered forthwith upon the decision of the court. The date of judgment shall be the date the judgment is entered in the docket. The clerk shall promptly complete and send to each party by first class mail the Notice of Judgment and Order form.

(g) **Payment Hearing and Orders to Pay.** If the decision of the court is for the plaintiff, the court shall, except where justice will not be served thereby, also order payment to the plaintiff, or to the court on behalf of the plaintiff, of the amount of the judgment and costs, as the case may be, on or by a date stated or in specified installments. If the defendant has appeared and is before the court at the time of decision and if the defendant does not pay the amount of the judgment and costs or agree to a payment schedule acceptable to the plaintiff, the court shall conduct a payment hearing, including requiring the defendant to complete a written financial statement signed under the penalties of perjury. The financial statement shall be kept separate from other papers in the case and shall not be available for public inspection, but shall be available to the court, to attorneys whose appearances are entered in the case and to the parties to the case. If the defendant is not before the court at the time of decision or the defendant has not appeared, the order shall be for the full amount of the judgment and costs, payable in full in thirty days, unless the court orders otherwise. The provisions of an order to pay shall be stated on the Notice of Judgment and Order form. Unless a payment hearing is waived by the plaintiff, the court shall also schedule the matter for a payment hearing thirty days from the date of judgment or shortly thereafter. The Notice of Judgment and Order form shall advise the parties that, unless the defendant timely appeals from the judgment, the defendant is required to complete a written financial statement under the penalties of perjury, to provide the plaintiff with a copy of the statement prior to the hearing, and to appear in court on that date if payment has not been made as ordered. The Notice shall further state that any such financial statement shall be kept separate from other papers in the case and shall not be available for public inspection, but shall be available to the court, to attorneys whose appearances are entered in the case and to the parties to the case. The Notice shall further state that if the defendant fails to appear on that date and the plaintiff does appear and states under oath or in writing under the penalties of perjury that payment has not been made as ordered, the court may immediately issue a *capias* to bring the defendant before the court without the need for prior service of an Order to Show Cause pursuant to Rule 9(a). The Notice of Judgment and Order form shall also advise the parties that they are not required to appear in court on that date if payment has been made as ordered. Following the payment hearing the court may amend its previous order to pay or issue a new order.

(h) **Costs.** If the decision of the court is for the plaintiff, the plaintiff's actual cash disbursements for the entry fee and surcharge shall be allowed as costs. Witness fees and

other costs shall be allowed only by special order of court. The court may, in its discretion, award additional costs in a sum not exceeding one hundred dollars against any party who has set up a frivolous or misleading claim or answer, or has otherwise sought to hamper a speedy and fair determination of the claim. The court may at any time amend the judgment to add the cost of service of any post-judgment process that was necessary to enforce the judgment.

(i) **Execution.** Execution shall issue to the plaintiff upon written request after fifteen business days of the date of judgment. Execution shall be in accordance with the statutory requirements for execution on civil judgments generally; provided, however, that execution shall in no way affect the procedure for enforcement of judgments under Rule 9 of these rules, except that double satisfaction of judgments shall not be allowed.

Commentary to 2001 Amendments

New paragraph (a) encourages the parties to file agreements for judgment or payment orders whenever they are able to reach such agreement.

New paragraph (d) is necessary to conform this Rule to the intent of the small claims amendments enacted by St. 1992, c. 379 that small claims matters generally be heard in the first instance by a magistrate. The new paragraph recognizes the authority of judges to adjudicate small claims cases in the first instance when needed in a particular court. The language of the paragraph responds to the Supreme Judicial Court's decision in *Trust Ins. Co. v. Bruce at Park Chiropractic Clinic*, 430 Mass. 607 (January 20, 2000) which holds that, by proceeding with an initial hearing by a judge, a defendant, including a plaintiff or a third party with respect to any counterclaim or any third-party claim brought against him, waives his right to appeal for a subsequent trial by a judge or before a jury. The language also responds to the Supreme Judicial Court's acknowledgment in *Trust Ins. Co. v. Bruce at Park Chiropractic Clinic*, *supra*. at 607, 610, that magistrates may determine contested motions in small claims actions, thereby in effect overruling the decision of the Appellate Division of the Boston Municipal Court in *Acentech, Inc. v. Cecconi*, 1994 Mass. App. Div. 44 (March 14, 1994). (Note: On October 25, 2000, the Appeals Court decided *Boat Maintenance & Repair Co. v. Lawton*, 50 Mass. App. Ct. 329, in which that court determined that a clerk-magistrate had no authority to hear and decide a contested motion in a small claims action. However, in so deciding, the Appeals Court did not acknowledge the Supreme Judicial Court's earlier decision in *Trust Ins. Co. v. Bruce at Park Chiropractic Clinic*, *supra*).

Paragraph (d) also states that magistrates who have mediated a small claim be disqualified from ruling on motions or presiding over any trial on the merits. It also requires recusal from any enforcement proceedings in the same small claim, because it seems inappropriate for one person to exercise both mediation and enforcement functions in the same case, even at different stages of the proceedings. The requirement that a court officer be in attendance whenever possible is strongly recommended by the Trial Court Committee on Small Claims Practices and Procedures. The remaining amendments in paragraphs (d) and (e) codify the procedural directives promulgated in the Policy Statement of Chief Justice for Administration and Management John E. Fenton, Jr., "Policies Regarding Hearing Small Claims under the Court Reorganization Act, Chapter 379 of the Acts of 1992" (February 19, 1993). Those involving the use of a courtroom and an appropriate bench, and involving the recording of proceedings, were also supported by

the Trial Court Committee on Small Claims Practices and Procedures.

Paragraph (g) introduces an automatic payment hearing. The Trial Court Committee on Small Claims Practices and Procedures has found that frustration with the current system for collecting judgments is the principal source of citizen dissatisfaction with the small claims process. Presently the burden falls to the prevailing party to initiate collection proceedings and to get the defendant before the court. The new payment hearing mandates a more active role for the courts. As the Committee has noted: “this streamlined approach to collections would be less costly for the prevailing party because an automatically scheduled hearing would eliminate the need, in the first instance, for service of a Notice to Show Cause. In addition, the parties would more clearly recognize that they have thirty days to work out payment in a non-adversarial manner.”

The provisions in Paragraph (g) for the filing of a financial statement also require that any such financial statement is to be protected from public inspection in terms similar to those of Rule 401(d) of the Supplemental Rules of the Probate Court.

The Committee secured the cooperation of three District Courts and one Housing Court and ran the payment hearing system as described in paragraph (g) on an experimental basis. The results not only supported the Committee’s belief that more judgments would be satisfied at an early date with less cost to the plaintiff, but court staff also found that the new procedure was less time consuming for them.

Since no appeal lies from the entry of a default judgment, a defendant against whom a default judgment has been entered must, upon receipt of a Notice of Judgment and Order form, complete a written financial statement, provide a copy of that statement to the plaintiff, and appear in court on the date specified in the Notice and Order form in accordance with the provisions of Rule 7(g) if payment has not been made as ordered.

The amendment to paragraph (h) provides authority for the longstanding practice of requiring the defendant to reimburse the plaintiff for the costs of service of any post-judgment Order to Show Cause or *capias* that is necessary to enforce the judgment.

Rule 8

RELIEF FROM JUDGMENT OR ORDER

Within one year of the date of judgment the court may, upon a party’s application and after notice to the other party in such form as the court deems appropriate, vacate or grant relief from any judgment or order, including an order of dismissal under Rule 7(b), entered under these Rules for want of actual notice to a party, for error or for any other cause that the court may deem sufficient, and may supersede execution. The court may also order the repayment of any amount collected under such judgment or order, and any action by the court may be made conditional upon the performance of any reasonable condition, including any reasonable expenses incurred by the other party.

These amendments clarify two ambiguities in the text of Rule 8. The first makes clear that relief from judgment may not be granted on ex parte application. The form, but not the obligation, of giving notice to the other parties is meant to be discretionary with the court. The second makes clear that the court, in vacating an order of dismissal or a default judgement, may, in appropriate circumstances, award reasonable expenses such as lost wages to the other party if the party was present on the day the case was dismissed or the defendant defaulted.

Rule 9

ENFORCEMENT OF JUDGMENTS

(a) **Order to Show Cause.** On an order issued after the payment hearing, or if there was no payment hearing, upon being informed by the plaintiff that a defendant who has been ordered to pay has failed to obey the order, the clerk shall schedule the matter before the court for enforcement proceedings and shall issue a Notice to Show Cause to the plaintiff, who must arrange for the Notice to Show Cause to be served by an officer duly qualified to serve it. The court may provide for any other means of service in individual cases as is deemed appropriate. The Notice to Show Cause shall indicate the date and time of hearing.

(b) **Enforcement Proceedings.** Upon hearing, the court shall take such action, permitted by law, as it deems appropriate to the end that orders of payment are complied with promptly and satisfaction of the judgment in the case is not frustrated. Such enforcement proceedings may be conducted either by a judge or by a magistrate, but a magistrate shall have no authority to enter an adjudication of civil contempt or to issue an order of incarceration. When enforcement proceedings are conducted by a magistrate and it appears that such action may be required, the magistrate shall refer the matter to a judge, who shall make an independent determination whether to enter an adjudication of civil contempt and may issue an order of incarceration or such other order as may be appropriate to enforce payment of the judgment. If a judge is available at the time of such referral, the matter may immediately be placed before the judge

(c) **Inability to Pay.** Unless the court orders otherwise, a defendant who asserts that he is presently unable to pay the amount of the judgment in full shall complete a financial statement on a form provided by the court and signed under the penalties of perjury prior to being examined by the court. The financial statement shall be kept separate from other papers in the case and shall not be available for public inspection, but shall be available to the court, to attorneys whose appearances are entered in the case, and to the parties in the case. If the court previously determined that at that time the defendant was financially able to comply with the court's payment order, the burden of proof shall be on

the defendant to establish that he is currently unable to comply with the court's payment order.

(d) **Defendant's Move to Another District.** If, after judgment has been entered, the defendant moves out of the judicial district where the action was brought, the court may, on request of the plaintiff, transfer the action to the division of the court in the judicial district to which the defendant has moved. If the court orders such a transfer, the docket entries and the original papers in the case shall be forwarded to said court, without payment of an entry fee, and the case shall proceed in that court as though originally entered therein.

Commentary to 2001 Amendments

Paragraph (a) is amended to eliminate the directive to the clerk to "make such inquiry into the matter [of non-payment], if any, as he deems useful." Since a clerk may later preside over enforcement proceedings as a magistrate, such informal contacts are best avoided since they might well involve ex parte discussions that would be inconsistent with a magistrate's responsibilities under S.J.C. Rule 3:12, Canon 3.

Paragraph (b) reflects the recommendation of the Trial Court Committee on Small Claims Practices and Procedures that magistrates be authorized to preside over proceedings to enforce small claims judgments, but not to enter adjudications of civil contempt or to make orders of incarceration. When such steps appear necessary, the matter is to be transferred to a judge "immediately," which assumes no need for rescheduling or further notice if a judge is then available.

While it is expected that most proceedings to enforce small claims judgments will be conducted by magistrates, paragraph (b) preserves the authority of judges to preside over such enforcement hearings ab initio.

New paragraph (c) makes it a matter of routine for a defendant who claims to be unable to pay the judgment in full to complete a sworn financial statement. The specific assignment of the burden of proof in paragraph (c) restates current case law. *Roy v. Leventhal*, 5 Mass. App. Ct. 792 (1977). See also G.L. c. 215, § 34 (in Probate Court contempt proceedings, "the defendant shall have the burden of proving his or her inability to comply with the pre-existing order or judgment of which the complaint alleges violation"). The defendant's financial statement shall be treated as confidential information in terms similar to those of Rule 401(d) of the Supplemental Rules of the Probate Court. See Rule 7(g) and the Commentary thereto

Rule 10 APPEAL

(a) **Transmittal of Case.** A defendant's claim of appeal for trial by a judge or before a jury of six persons shall be made in writing, shall comply with the requirements of G.L. c. 218, § 23, and shall specify whether the defendant claims trial by a judge or before

a jury. The defendant shall mail a copy of the claim of appeal to the plaintiff. Upon the defendant's filing of a claim of appeal, the clerk shall forthwith note on the docket of the case his receipt of the claim of appeal, the filing fee for the appeal required by section 23, and any appeal bond required by section 23 or an equivalent cash deposit in lieu thereof. If each of these items has been timely received and the defendant has appealed for trial by a judge, the clerk shall schedule the matter before a judge of that division for trial. If each of these items has been timely received and the defendant has appealed for trial before a jury, the clerk shall transmit the original docket entries and the original papers in the case, or an attested copy of the original docket entries and the original papers in the case, to the appropriate jury session. The court may waive the filing fee if the applicant is indigent and may waive the bond requirement if it finds that the applicant has insufficient funds to furnish the bond and that the appeal is not frivolous. Prior to the case being tried by a judge or transmitted to the jury session, any judge of the division from which the case is appealed may hear and determine any question raised by a party concerning the defendant's compliance with the statutory requirements for appeal. The clerk of the division from which the case is appealed shall retain custody of any appeal bond posted pursuant to section 23 or any equivalent cash deposit in lieu thereof, and shall deposit with the State Treasurer the filing fee and surcharge for the appeal.

If any required item has not been timely received, the clerk shall so notify both parties, shall return any filing fee, surcharge, appeal bond or cash deposit in lieu thereof forwarded by the defendant, and shall note such action, and the reasons therefor, on the docket. The clerk's notice shall inform the defendant that he may have the issue of his compliance with the statutory prerequisites for appeal determined by a judge, upon motion filed within ten days of receiving the notice.

(b) **Conduct of Trials.** Trials by a judge or before a jury shall be conducted in accordance with the provisions of Rule 7, and, in the case of a trial before a jury, in accordance with the provisions of law applicable to jury trials in the Superior Court Department. In a trial before a jury, the judge may direct that any provisions of the Massachusetts Rules of Civil Procedure be utilized, if not inconsistent with Rule 7. A counterclaim or third-party claim may not be raised for the first time on appeal.

(c) **Judgments and Orders to Pay.** Judgment shall be entered forthwith upon the decision of the judge or the verdict of the jury. A judgment for the plaintiff shall be entered forthwith if the defendant fails to appear for trial and the plaintiff does appear, or if the defendant withdraws the claim of appeal. Except where justice will not be served thereby, the judge shall, after holding a payment hearing, forthwith order payment to the plaintiff, in accordance with Rule 7(g). Otherwise the judge must schedule a payment hearing in

accordance with Rule 7(g) in the division from which the case was appealed. Any order for payment shall grant the party no less than thirty days within which to pay. The clerk shall promptly furnish each party with written notice of the court's judgment, any order for payment, and any payment hearing. When judgment is entered in the jury session, such notice shall be given by the clerk of the jury session.

(d) **Post-judgment Proceedings in Jury Session.** When a small claims action has been tried on appeal in the jury session, any post-trial motions filed within ten days after the entry of judgment shall be filed with the clerk of the jury session and heard by the judge who presided over the trial. If justice will be served thereby, the judge may stay, modify, or supersede any order for payment already made.

Unless the judge orders otherwise, upon the expiration of ten days after judgment, the case shall be retransferred to the division from which it was appealed, for any further enforcement proceedings pursuant to Rule 7 and Rule 9, except that a case shall not be retransferred until any motion filed, or any appeal claimed, within ten days after entry of judgment has been decided. The clerk of the jury session shall transmit original or attested copies of the judgment, any order for payment, any order deciding a post-trial motion, and any rescript of an appellate court, to the clerk of the division to which the case is being re-transferred.

Any motions which are filed after the case has been re-transferred shall be filed with the clerk of the division to which the claim has been re-transferred. The clerk shall transmit any such motion that affects the judgment to the judge who presided over the trial in the jury session, who may determine such motion, with or without hearing, wherever the judge is then sitting. Other motions that affect only an order for payment or proceedings to enforce the judgment may be heard by any judge or magistrate sitting in the division to which the claim has been re-transferred.

(e) **Appeal from the Housing Court Department to the Appeals Court.** Any claim of appeal from the Housing Court Department to the Appeals Court from the judgment in a small claims action tried by a judge or before a jury shall be filed with the clerk of the division or the jury session where the case was tried within ten days after entry of judgment. If justice will be served thereby, the judge who presided over the trial may stay, modify, or supersede any order for payment already made. Further procedures on appeal shall be governed by the Massachusetts Rules of Appellate Procedure.

Commentary to 2001 Amendments

Most of these amendments are necessary because an appealing party must now elect between trial by a judge and trial before a jury. Jury session procedures are amended to permit the increasingly frequent practice of sending original case papers to the jury session (while retaining copies at the primary court). The authority granted the Chief Justice of the District Court Department to designate where trials are to be heard in G.L. c. 218, § 23, permits the retention of jury-waived cases in the court where the case originated regardless of whether that court has a jury session. The purpose is to take caseload pressure away from busy jury sessions.

Unlike the District Court and Housing Court Departments, the Boston Municipal Court Department of the Trial Court does not consist of separate geographical divisions. Accordingly, all appeals from a small claims session of the Boston Municipal Court are to a jury session of that same court and all papers related to such appeals are processed within the Office of the Clerk of the Boston Municipal Court for Civil Business.

In paragraph (a), the reference to the surcharge required by G.L. c. 262, § 4C for new entries “to which a separate docket number is assigned” has been deleted since virtually all courts no longer assign a new docket number when a magistrate’s decision in a small claim is appealed to a judge or a jury.

The deletion in paragraph (b) of the reference to the District/Municipal Courts Rules of Civil Procedure reflects their July 1, 1996 consolidation with the Massachusetts Rules of Civil Procedure.

The limitation in paragraph (e) of appeals to the Appeals Court to those deriving from cases tried by a judge or before a jury in the Housing Court Department reflects the decision of the Supreme Judicial Court in *Trust Ins. Co. v. Bruce at Park Chiropractic Clinic*, 430 Mass. 607, 610, footnote 9 (January 20, 2000). There, in a case involving a motion heard initially by a District Court judge, the Supreme Judicial Court stated:

“To the extent that Rule 10(e) of the Uniform Small Claims Rules (1999) provides for an appeal to the Appeals Court from the jury session, it is in conflict with G.L. c. 218, §23, which provides for the report of questions of law to the appellate division in certain circumstances. General Laws Chapter 211A, §10 provides for an appeal from the appellate division to the Appeals Court.”

However, there is no appellate division in the Housing Court Department, thereby necessitating, in order to provide for appellate review, an appeal to the Appeals Court from cases heard by a judge or before a jury in the Housing Court Department.

**FINANCIAL STATEMENT
OF JUDGMENT DEBTOR**

DOCKET NUMBER

**Trial Court of Massachusetts
Small Claims Session**

CASE NAME		CURRENT COURT	
NAME OF JUDGMENT DEBTOR <i>(the person who lost the case and owes money)</i>			
HOME ADDRESS	HOME TELEPHONE NUMBER	DATE OF BIRTH	
SOCIAL SECURITY NUMBER	DRIVER'S LICENSE NUMBER & STATE	MARITAL STATUS	NO. & AGE OF CHILDREN LIVING WITH YOU
OCCUPATION	EMPLOYER'S NAME & ADDRESS	HOW LONG WITH EMPLOYER?	

INCOME *(list all sources)*

Your Gross Pay:	\$	per week
Your Take-Home Pay:	\$	per week
Spouse's Take-Home Pay:	\$	per week
Child Support Income:	\$	per week
Pension:	\$	per week
AFDC/SSI:	\$	per week
Other <i>(itemize on back)</i> :	\$	per week
Total Weekly Income:	\$	per week

EXPENSES

Rent/Mortgage:	\$	per week
Utilities:	\$	per week
Food:	\$	per week
Alimony/Child Support:	\$	per week
Child Care:	\$	per week
Transportation:	\$	per week
Insurance:	\$	per week
Entertainment <i>(including cable)</i> :	\$	per week
Other <i>(itemize on back)</i> :	\$	per week
Total Weekly Expenses:	\$	per week

ASSETS *(list value of all assets)*

<i>Real Estate you own or co-own</i>	<u>RESIDENCE</u>	<u>OTHER</u>
Address:	
Other Owner(s):	
Mortgage Balance:	\$	\$
Fair Market Value:	\$	\$
Rental Income:	\$	\$
<i>Vehicle(s)/Boat(s) you own</i>	<u>VEHICLE/BOAT 1</u>	<u>VEHICLE/BOAT 2</u>
Year/Make & Model:	
Purchase Year:	
Purchase Price:	\$	\$
Amount Owed:	\$	\$
<i>Bank Accounts</i>	<u>CHECKING</u>	<u>SAVINGS</u>
Bank/Credit Union:	
Account No.:	
Balance:	\$	\$
Expected Tax Refund:	\$	
How much money do you have in cash?	\$	
Have you disposed of or transferred any asset since this claim was brought? (If so, explain on back.) <input type="checkbox"/> No <input type="checkbox"/> Yes		
(List on back anything of value not listed above that you own or co-own, or that is held for you by another.)		

DEBTS *(list all debts not included above in your expenses – e.g. credit card debts)*

<u>CREDITOR</u>	<u>NATURE OF DEBT</u>	<u>DATE OF ORIGIN</u>	<u>TOTAL DUE</u>	<u>WEEKLY PAYMENT</u>
1			\$	\$
2			\$	\$
3			\$	\$

Under the penalties of perjury, I swear that the above information is complete and accurate to the best of my personal knowledge.

DATE SIGNED	SIGNATURE OF JUDGMENT DEBTOR
	X

Pursuant to Uniform Small Claims Rule 9(c), all information in this affidavit is CONFIDENTIAL.
It shall be available to any other party to this litigation, but shall not be available for public inspection unless the Court so orders.